(28,761)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 302.

FRANK TERRACE AND ELIZABETH TERRACE, HIS WIFE, AND N. NAKATSUKA, APPELLANTS,

vs.

LINDSAY L. THOMPSON, ATTORNEY GENERAL OF THE STATE OF WASHINGTON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

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2 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132-E.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDLEY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, sitting in equity:

Frank Terrace and Elizabeth Terrace, his wife, citizens of the United States and of the State of Washington and residents of the Western District of Washington, and N. Nakatsuka, a subject of the Emperor of Japan and a resident of the Western District of Washington, bring their bill of complaint against Lindley L. Thompson as Attorney General of the State of Washington, a citizen of the United States and of the State of Washington, and a resident of the Southern Division of the Western District of Washington.

And thereupon the plaintiffs bring their complaint and show unto your Honors as follows:

I.

That plaintiffs suing, on behalf of themselves and others similarly situated bring this bill of complaint against said Lindley L. Thompson as the duly elected, qualified and acting Attorney General of the State of Washington.

II.

That the value of the matter in dispute herein between each plaintiff and the defendant exceeds the sum of $3,000.00, exclusive
3 of interest and costs.

The jurisdiction of this Honorable Court is invoked because of and by reason of the Federal question involved in this suit and equity jurisdiction, and because plaintiffs have no adequate remedy at law.

III.

That the plaintiffs Terrace are now and for a number of years last past have been the owners of the following described real estate lying and being in King County, State of Washington, to-wit:

The Southwest quarter (S. W. ¼) of the Southeast quarter (S. E. ¼), and Lot Five (5) of Section Thirty-six (36), Township Twenty-three (23) North, Range Four (4) East of the Willamette Meridian.

That said real estate is particularly adapted to raising vegetables, and for a number of years last past has been, and is now being, devoted to that and agricultural purposes. That the plaintiff N. Nakatsuka is a capable farmer and is in all respects a desirable person to become a tenant of said real estate. That the plaintiffs Terrace desire to lease said real estate to the plaintiff N. Nakatsuka for the period of five years, and the plaintiff N. Nakatsuka desires to accept such lease, and but for the Act of the State of Washington, hereinafter specifically mentioned, the plaintiffs would execute a lease of said real estate from the plaintiffs Terrace to the plaintiff N. Nakatsuka for a period of five years from this date. N. Nakatsuka, in addition to being a capable farmer, is engaged in the business of trading, wholesale and retail, in farm products, and, instead of purchasing such farm products, he has produced and desires to produce his own farm products for the purpose of selling them in the wholesale and retail trade, and "if he is prevented from leasing land for the
4 purpose of producing such farm products for such trade he will be prevented from engaging in trade and the incidents to trade as he is authorized to do under the Treaty hereinafter mentioned."

IV.

That there was enacted by the Legislature of the State of Washington, in the year 1921, an Act entitled "An Act relating to the rights and disabilities of aliens with respect to lands, providing for forfeitures in certain cases, prescribing penalties, and repealing Sections 135 and 136 of Pierce's Code, 8775 and 8776 of Remington & Ballinger's Annotated Codes and Statutes of Washington," approved March 8, 1921.

V.

That the defendant Lindley L. Thompson, as the Attorney General of the State of Washington, has threatened to, and will enforce said Act in each and all of its terms, and the whole thereof, and particularly against these plaintiffs in the event that they enter into a lease of said real estate for the purpose and terms aforesaid, will forfeit or attempt to forfeit such leasehold interest to the State of Washington, and will prosecute these plaintiffs criminally for an alleged violation of said Act, above mentioned, and the said Act is in its terms so drastic and the penalties attached to a violation of the terms thereof are so great, that neither of these plaintiffs may make or execute such lease, even for the purpose of testing the constitutionality and validity of said Act of the Legislature above mentioned, and unless this Court shall determine the validity of said Act in this proceeding, said plaintiffs will be compelled to submit to said Act whether the same be valid or invalid, and thereby be deprived of their property without due process of law and denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States, and the plaintiffs have no adequate remedy at law, but are relievable only in a court of equity.

VI.

That said Act of the Legislature of the State of Washington above mentioned, is in violation of and contrary to Section 33 of Article II of the Constitution of the State of Washington; and protection of the provisions of said Section are hereby expressly invoked by the plaintiffs and each of them.

VII.

That said Act of the Legislature of the State of Washington, above mentioned, is in violation of and contrary to the existing Treaty between the United States of America and the Empire of Japan, and particularly Article I thereof, in that it prohibits subjects of the Emperor of Japan from leasing land for residential and commercial purposes, and from doing everything incident to or necessary for trade upon the same terms as native citizens of the United States of America; and the protection of said Treaty and *and* of Article I thereof is especially invoked by these plaintiffs and each of them.

VIII.

That said Act of the Legislature of the State of Washington is in contravention of Section 3 of Article I of the Constitution of the State of Washington in that it deprives these plaintiffs of property without due process of law; is in contravention of Section 12 of Article I of the Constitution of the State of Washington in that it grants privileges or immunities which upon the same terms do not

equally belong to all citizens; and protection of the provisions of said Sections of Article I of the Constitution of the State of Washington is hereby specially invoked by the plaintiffs and each of them.

6

IX.

That said Act of the Legislature of the State of Washington above mentioned, is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives the plaintiffs of property without due process of law and denies to them and each of them the equal protection of the law; and protection of said Section 1 of the Fourteenth Amendment to the Constitution of the United States is hereby specially invoked by the plaintiffs and each of them.

X.

That if the plaintiffs are not permitted to enter into a lease of said real estate, as aforesaid, and on the terms above mentioned, a large and irreparable loss will occur to them and each of them, and the plaintiffs have no adequate remedy at law but are relievable only in a court of equity.

Inasmuch as plaintiffs and each of them have no adequate remedy in the premises by the strict rules of law and can obtain relief only in a court of equity where matters and things of the kind and character hereinbefore stated are perfectly cognizable and relievable, and to the end that they and each of them may have relief which they and each of them can only obtain in a court of equity, they and each of them pray:

1. That Lindley L. Thompson, as Attorney General of the State of Washington, be enjoined and restrained, provisionally, preliminarily and perpetually by the order and injunction of this Court from bringing, directly or indirectly, and from permitting to be brought directly or indirectly, any proceedings at law or in equity for the purpose of enforcing said Act of the Legislature of the State of Washington, above mentioned, against these plaintiffs, or either of them, upon their executing or attempting to execute a lease of real

7 estate above mentioned for the above mentioned term, or any other person, or corporation similarly situated, and from causing the plaintiffs, or either of them, or any other person or corporation similarly situated, to be arrested for violating the terms and provisions of said Act, and from taking any other action in any other manner to prevent or interfere with the complainants, or either of them, from executing and delivering such lease on said real estate, and that an order to show cause issue herein upon application of the plaintiffs herein directed to the above named defendant, requiring him to show cause why a temporary injunction should not issue as prayed for herein, and that a temporary restraining order may issue pending the hearing of said show cause order.

2. That upon the hearing the aforesaid Act passed by the Legislature of the State of Washington be declared to be unconstitutional,

illegal and void and that a perpetual injunction be issued restraining the enforcement thereof as hereinabove prayed for.

3. That a writ of subpœna may issue to defendant requiring him to answer this bill of complaint fully and truthfully, but not on oath, an oath hereby being waived, and that further and general relief be granted as the nature of plaintiffs' case may require or to equity may seem meet.

JAMES B. HOWE.
E. HEISTER GUIE.
DALLAS V. HALVERSTADT.

8 THE UNITED STATES OF AMERICA,
Western District of Washington,
Southern Division, ss:

Frank Terrace and Nakatsuka, each being first duly sworn on oath deposes and says for himself: I am one of the plaintiffs named in the foregoing bill of complaint; I have read the foregoing bill of complaint, know the contents thereof, and the same is true to my own knowledge; that I make this verification in behalf of my co-plaintiff as well as in my own behalf.

FRANK TERRACE.
N. NAKATSUKA.

Subscribed and sworn to before me this 11th day of June, 1921.
[Notarial Seal.] DALLAS V. HALVERSTADT,
Notary Public in and for the State of Washington, Residing at Seattle.

Indorsed: Filed in the United States District Court Western District of Washington, Southern Division, Jun. 13, 1921, 2:40 P. M., F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

9 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDLEY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Motion for Temporary Injunction.

Come now the above named plaintiffs and upon their verified bill of complaint herein move the Court for a temporary injunction re-

straining the above named Lidley L. Thompson, as Attorney General for the States of Washington, during the pendency of the above entitled action from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing the Act of the Legislature of the State of Washington for the year 1921, entitled, "An Act relating to the rights and disabilities of aliens with respect to lands, providing for forfeitures in certain cases, prescribing penalties, and repealing Sections 135 and 136 of Pierce's Code, 8775 and 8776 of Remington & Ballinger's Annotated Codes and Statutes of Washington," approved March 8, 1921, against these plaintiffs or either of them upon their executing or attempting to execute a lease on the real estate described in the bill of complaint herein, upon the terms therein mentioned. or any other person or corporated similarly situated, and from causing the plaintiffs or either of them or any other person or corporation similarly situated to be arrested for violating the terms and provisions of said Act, and from taking any other action in any other manner to prevent or interfere with the plaintiffs or either of them from executing and delivering a lease as described in the bill of complaint on the real estate in said bill of complaint mentioned.

JAMES B. HOWE.
E. HEISTER GUIE.
DALLAS V. HALVERSTADT.

Indorsed: Filed in the United States District Court Western District of Washington Southern Division, Jun. 13, 1921, 2:40 P. M., F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDLEY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Order.

The Court having considered the verified bill of complaint duly filed in the above entitled suit, and the motion of the plaintiffs for a temporary injunction therein, and it appearing to the Court that the suit is one requiring the presence on the hearing of the application for a temporary injunction of three judges, on- of whom shall be a Circuit Judge of the United States.

It is by the Court ordered that the application for such temporary injunction be heard on the 24th day of June, 1921, at two o'clock in the afternoon, in the United States District Court at the court house thereof in the City of Tacoma, Pierce County, Washington.

EDWARD E. CUSHMAN,
United States District Judge.

Dated June 14th, 1921.

Indorsed: Filed in the United States District Court Western District of Washington, Southern Division, Jun. 14, 1921, 2:10 P. M., F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

12 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDLEY L. THOMPSON, Attorney General of the State of Washington, Defendant.

Notice.

To Honorable Louis F. Hart, Governor of the State of Washington, and Honorable Lindley L. Thompson, Attorney General of the State of Washington:

You and each of you are hereby notified that Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka have filed their verified bill of complaint herein in the District Court of the United States for the Western District of Washington, Southern Division, against Lindley L. Thompson, as Attorney General of the State of Washington, praying that said Attorney General be restrained provisionally, preliminarily and perpetually by the order and injunction of the above Court from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing the Act passed by the 1921 Legislature of the State of Washington, entitled, "An Act relating to the rights and disabilities of aliens with respect to lands, providing for forfeitures in certain cases, prescribing penalties, and repealing Sections 135 and 136 of Pierce's Code, 8775 and 8776 of Remington and Ballinger's Annotated Codes and Statutes of Washington," and approved March 8, 1921, against the plaintiffs or either of them upon the execution or attempting to execute a lease of the real estate described in the bill of complaint upon the terms therein mentioned, or any other person or corporation simi-

larly situated, and from causing the plaintiffs or either of
13 them or any other person or corporation similarly situated to be arrested for violating the terms and provisions of said Act, and from taking any other action in any other manner to prevent or interfere with the plaintiffs or either of them from executing and delivering such lease on said real estate. The motion for such temporary injunction will be heard in the District Court of the United States at the court house thereof in the City of Tacoma, Pierce County, State of Washington, on the 24th day of June, 1921, at the hour of 2:00 o'clock P. M. or as soon thereafter as counsel can be heard.

JAMES B. HOWE.
E. HEISTER GUIE.
DALLAS V. HALVERSTADT.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 14 1921, 2:10 P. M. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

14 In the United States District Court for the Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Affidavit of Defendant in Opposition to Motion for Temporary Injunction.

STATE OF WASHINGTON,
County of Thurston:

Lindlay L. Thompson being first duly sworn on oath deposes and says: That he is the attorney general of the state of Washington, and the defendant herein; that he has not knowledge or information of the alleged contemplated lease described in the bill of complaint herein and that consequently he has never threatened to institute any action against the plaintiffs or any of them; that he intends to enforce the provisions of chapter 50, Laws of Washington of 1921, fairly and impartially unless restrained from so doing by the order of a court of competent jurisdiction, but that it is not his intention to enforce said law in such a manner as to deprive any persons of any rights given to them by the Constitution of the United States, or by any existing treaty between the United States

any any foreign nation; that in the enforcement of said law he intends only to bring such proceedings as are expressly authorized by said law, and that he disclaims any intention of bringing any proceedings either criminal, at law or in equity, which said chapter 50, and the facts as they may hereafter appear do not empower and direct him to bring.

15 Deponent further says that should the lease described in the bill of complaint herein be executed, and the fact that said lease has been executed reported either to the deponent or the prosecuting attorney of the county in which said land is located, and should he be convinced after an investigation that said lease has been executed in violation of said chapter 50, that he would then institute not more than two proceedings in the courts of the state of Washington, one a criminal proceeding against the plaintiffs Frank Terrace and Elizabeth Terrace, and the other a proceeding to escheat to the state of Washington the interest of the lessee in said property, and that should he fail to prevail in said actions in the appellate courts he would not thereafter prosecute any further legal proceedings against these plaintiffs or any of them.

LINDSAY L. THOMPSON.

Subscribed and sworn to before me this 24th day of June 1921.

[Notary Seal.] O. R. SCHUMANN,
Notary Public in and for the State of Washington, Residing at Olympia.

Service admitted June 24, 1921.

JAMES B. HOWE.
E. HEISTER GUIE.
DALLAS V. HALVERSTADT.

Indorsed: Filed in the United States District Court Western District of Washington, Southern Division. June 24 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

16 In the United States District Court for the Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

v.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Motion to Dismiss.

Comes now the defendant, Lindsay L. Thompson, as attorney general of the state of Washington, and moves the court to dismiss the bill in this cause because said bill does not state any matters of equity entitling plaintiffs to the relief prayed for, nor are the facts as state- sufficient to entitle plaintiffs, or any of them to any relief against this defendant.

Wherefore defendant prays the judgment of this court whether he shall further answer and that he be dismissed with his costs.

L. L. THOMPSON,
Attorney General,
Solicitor for Defendant.

17 STATE OF WASHINGTON,
County of Thurston, ss:

E. W. Anderson being first duly sworn on oath deposes and says: That he is over twenty-one years of age, a citizen of the state of Washington and is employed in the office of L. L. Thompson, attorney general, attorney for the defendant herein, That upon the 30 day of June, 1921, he served a copy of the attached motion to dismiss upon D. V. Halverstadt, one of the attorneys for the plaintiffs herein by depositing a true copy of said motion to dismiss in a sealed envelope, postage fully prepaid thereon, addressed to D. V. Halverstadt, Marion Building Seattle, Washington, and depositing said envelope in the United States Post Office at Olympia, Washington.

E. W. ANDERSON.

Subscribed and sworn to before me — 30 day of June, 1921.
[Notary Seal.] M. H. WIGHT,
Notary Public in and for the State of Washington, Residing at Olympia.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 1, 1921. F. M. Harshberger, Clerk, by Ed M. Lakin, Deputy.

18 In the United States District Court for the Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Amended Motion to Dismiss.

Comes now the defendant Lindsay L. Thompson, as Attorney General of the State of Washington, the parties hereto having stipuated that he may file his amended motion to dismiss, and moves the court to dismiss the bill of complaint filed herein for the reasons and upon the ground that, as appears upon the face thereof:

1. Said bill of complaint does not state any matters of equity entitling the plaintiffs, or any of them, to the relief prayed for;

2. Said bill of complaint does not state facts sufficient to entitle plaintiffs, or any of them, to any relief against this defendant;

3. The plaintiffs, and each of them, have a plain, adequate, complete and speedy remedy at law.

Wherefore defendant prays the judgment of this court whether he shall further answer and that he be dismissed with his costs.

L. L. THOMPSON,
Attorney General,
Solicitor for Defendant.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 29, 1921. F. M. Harshberger, Clerk, by Ed M. Lakin, Deputy.

19 In the District Court of the United States, Western District of Washington, Southern Division.

In Equity.

No. 132–E.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Complainants,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Memoran n Decision on Application for a Temporary Injunction.

Filed July 25, 1921.

James B. Howe, Esq., E. Heister Guie, Esq., Dallas V. Halverstadt, Esq., for complainants.
L. L. Thompson, Attorney General, for defendant.

Before Hon. William D. Gilbert, C. J., Hon. Edward E. Cushman, D. J., Hon. Jeremiah Neterer, D. J.

CUSHMAN, *D. J.*:

The bill alleges that the complainants Terrace, owners of certain lands in this District, desire to lease such lands to the complainant Nakatsuka, a subject of Japan, who desires to lease them from them, and that he is engaged in farming and trading wholesale and retail in farm products; that such lease will be prevented by defendant's enforcement of Chapter 50 Laws of Washington, 1921, commonly known as the "Alien Land Bill". It is alleged that the result will be that the complainant Nakatsuka

"if he is prevented from leasing land for the purpose of producing such farm products for such trade, * * * will be prevented from engaging in trade and the incidents of trade as he is authorized to do under the Treaty hereinafter mentioned."

20 It is alleged that the act in question is contrary to the Fourteenth Amendment to the Constitution of the United States; to Article I of the Treaty with Japan; and Sec. 33, Article II of the Constitution of the State of Washington.

The act provides, not only for the forfeiture of the lands affected, but that whoever conveyes lands to an alien shall be guilty of a gross misdemeanor, the punishment for which may be a year's imprisonment in jail. This, we conclude, is such a severe punishment as to prevent persons affected from resorting to the courts to de-

termine the validity of the statute in question, and that, therefore, the remedy at law is not sufficient (Ex parte Young, 209 U. S., 123). The remedy at law is also inadequate as to the complainant Nakatsuka (Raich v. Truax, 219 Fed. 273, at 283).

Rast v. Van Deman & Lewis (240 U. S., 342, 355, 368) and Tanner v. Little (240 U. S. 369) have no application. In those cases the statute attacked required the payment of a license fee. In such cases an edequate remedy at law exists because, after payment of the license tax, suit can be had for its re-payment. For the same reason M'Cormack Bros. Co. v. Tacoma (201 Fed. 374) is inapplicable, as well as for the further reason that the plaintiff in such case was a corporation which could not be imprisoned for failure to pay the license, being only liable for the payment of a small fine. In such a case the remedy at law would not, necessarily, be inadequate.

The Constitution of the State of Washington provides:

"The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall
21 not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition" (Sec. 33, Art. II).

The Act in question defines "Land" as follows:

"'Land' does not include lands containing valuable deposits of minerals, metals, iron, coal or fire clay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom, but does include every other kind of land and every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof except a mortgage and except a right to the possession, use or enjoyment of land for a period of not more than ten years for a purpose for which an alien is accorded the use of land by a treaty between the United States and the country whereof he is a citizen." (Sec. 1. (b); Laws 1921, Chap. 50, p. 156).

Under the foregoing language, it is not necessary to consider the question of whether at common law a leasehold interest is personalty or realty, for, without doubt, by the foregoing, it is intended to include leases of agricultural lands.

The act also provides:

"'Alien' does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and all corporations and other organized groups of persons a majority of whose capital stock is owned or controlled by aliens or a majority of whose members are aliens;" (Sec. 1, (a).

There is nothing in the bill as to the length of time for which complainant Nakatsuka desires to lease the lands, or for which it will be necessary to lease them.

There is no allegation in the bill as to whether the complainant Nakatsuka has, or has not declared his intention to become a citizen of the United States. All that is disclosed by the bill touching his eligibility for citizenship is the allegation that he is a subject of the Emperior of Japan. There is a possibility that included among the subjects of the Emperor, there are Caucasians or "white persons."

Congress has, by section 2169 R. S. (U. S. Comp. Stat. 4358) limited the right of naturalization to those aliens being "free white persons and to aliens of African nativity and to persons of African descent."

We feel justified in considering the bill as though it were alleged that Nakatsuka had the prevailing ethnological characteristics of his fellow-subjects, and that he had not declared his intention to become a citizen. He is, therefore, not a "white person" within the meaning of Section 2169 R. S. (U. S. Comp. Stat. sec. 4358).

In re Young, 198 Fed., 175;
In re Saito, 62 Fed., 126;
In re Geronimo Para, 269 Fed., 643.

Nakatsuka not being eligible to citizenship under the law as it now stands, even if such complainant had filed, or sought to file a declaration of intention to become a citizen, he could not—considering the present uniformity in the decisions—fairly be said to have done so "in good faith."

A state may lawfully prohibit aliens acquiring land within its boundaries, if there is no treaty to the contrary.

Chirac v. Chirac, 2 Wheat., 259, 272;
Hauenstein v. Lynham, 100 U. S., 483, 484;
De Vaughan v. Hutchinson, 165 U. S., 566, at 570;
Clarke v. Clarke, 178 U. S., 186;
Blythe v. Hinckley, 180 U. S., 333.

If a State constitution or statute conflicts with the treaty, it is either void or suspended during the existence of the treaty for by Article VI of the Constitution of the United States it is provided:

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall

bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Martin v. Hunter, 1 Wheat., 304;
Carneal v. Banks, 10 Wheat., 181;
Hopkirk v. Bell, 3 Cranch, 454;
Geofrey v. Riggs, 133 U. S., 258;
Ware v. Hylton, 3 Dall., 199;
Chirac v. Chirac, 2 Wheat., 259;
Hauenstein v. Lynham, 100 U. S., 483 at 488;
Missouri v. Holland, 252 U. S., 416 at 434;
In re Stirud's Estate, 58 Wash., 339;
State ex rel. Tanner v. Staeheli, 12 Wash. Dec., 288.

This brings us to the question of the terms of the treaty with Japan with which the act is alleged by the bill to conflict.

The only portion of the treaty material to be considered is that part of Article I providing:

"The citizens and subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established." (37 Stat. at L., p. 1504).

The lasting impression created by the foregoing language is that it was intended to withhold the right to own or lease agricultural lands. This impression becomes fixed upon consideration of the fact that this, in substance, was true at common law. (Coke upon Littleton, Book 12 *b*).

24

A law of California (Laws of 1913, p. 113) is, in its general purport, similar to the act herein question, although by Section 2 of that act aliens were permitted to lease lands for a term of not over three years.

A controversy arose concerning the validity under the treaty of the California Act between the Department of Foreign Affairs for the Empire of Japan and our own Secretary of State. In the progress of the exchange of views between the officials so representing the two Governments, the Secretary of State found the act not to violate the treaty and, in part, said:

"This treaty was based upon a draft presented by the Imperial Government. In Article I of this draft there is found the following clause:

"'3. They (the Citizens or subjects of the contracting parties) shall be permitted to own or hire and occupy the houses, manufactories, warehouses, shops and premises which may be necessary for them, and to lease land for RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MANUFACTURING and other lawful purposes.'

"It will be observed that in this clause, which was intended to deal with the subject of real property, there is no reference to the ownership of land. The reason of this omission is understood to be that the Imperial Government desired to avoid treaty engagements concerning the ownership of land by foreigners and to regulate the matter wholly by domestic legislation.

"In the treaty as signed the rights of the citizens and subjects of the contracting parties with reference to real property were specifically dealt with (Art. I) in the stipulation that they should have liberty 'to own or lease and occupy houses, manufactories, warehouses and shops' and 'to lease land for residential and commercial purposes.' IT THUS APPEARS THAT THE RECIPROCAL RIGHT TO LEASE LAND WAS CONFINED TO 'RESIDENTIAL AND COMMERCIAL PURPOSES,' AND THAT THE PHRASES 'INDUSTRIAL' AND 'OTHER LAWFUL PURPOSES,' WHICH WOULD HAVE INCLUDED THE LEASING OF AGRICULTURAL LANDS, WERE OMITTED.

"The question of the ownership of land was, in pursuance of the desire of the Japanese Government, dealt with by an exchange of notes in which it was acknowledged and agreed that this question should be regulated in each country by the local law and that
25 the law applicable in the United States in this regard was that of the respective States. This clearly appears from the note of Baron Uchida to Mr. Knox of February 21, 1911, in which, in reply to an inquiry of the latter on the subject Baron Uchida said:

'In return for the rights of land ownership which are granted Japanese by the laws of the various states of the United States (of which, I may observe, there are now about thirty) the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to *American citizens from all the States, reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate States.*'

"In quoting the foregoing passage I have italicised the last clause for the purpose of calling special attention to the fact that the contracting parties distinctly understood that, in conformity with the express declaration of the Imperial Japanese Ambassador, the right was reserved to maintain as to land ownership the condition of reciprocity in the sense that citizens of the United States, coming from States in which Japanese might not be permitted to own land, were to be excluded from the reciprocal privilege in Japan.

"From what has been pointed out it appears to result, first, that the California statute, in extending to aliens not eligible to citizenship of the United States the right to lease lands in that State for agricultural purposes for a term not exceeding three years, MAY BE HELD TO GO BEYOND THE MEASURE OF PRIVILEGE ESTABLISHED IN THE TREATY, WHICH DOES NOT GRANT THE RIGHT TO LEASE AGRICULTURAL LANDS AT ALL; and, secondly, that, so far as the statute may abridge the right of such aliens to own lands within the States, the right has been reserved by the Imperial Government to act upon the principle of exact reciprocity with respect to citizens of the individual states. In a word, the measure of privilege and the measure of

satisfaction for its denial were perfectly understood and accepted." (Letter of William Jennings Bryan to Viscount Chinda, July 16, 1912, "Annex No. 7," pp. 17 & 18, "Controversy—United States and Japan—California Question," Congressional Library JV 6888 C2 J4). (Italics ours.)

In the case of Sullivan v. Kidd, decided January 3, 1921, (No 6 U. S. Supreme Court Advance Opinions p. 192 at 195), the court said:

"While the question of the construction of treaties is judicial in its nature, and the courts, when called upon to act, should be careful to see that international engagements are faithfully kept and observed, the construction placed upon the treaty before us and consistently adhered to by the Executive Department of the government.
26 charged with the supervision of our foreign relations, should be given much weight."

A clear intention being shown not to supersede, in the particular now in question, the State's authority to regulate the rights of title and possession in lands within its boundaries, that intent may not be defeated by the claim now made that complainant Nakatsuka's business of farming is incidental to his business as a wholesale and retail trader in farm products, for there is no more reason for considering farming an incident of the latter than for considering the latter an incident of the former.

The language of the treaty is:

"and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects * * *." (37 Stat. at L., 1504.)

In the most liberal construction of this language that may be indulged in, it cannot fairly be said that truck farming is incidental to trading, either wholesale or retail, in the products of a farm, any more than conducting a sheep ranch or growing mulberry trees is incidental to the dry goods trade.

Kidd v. Pearson, 128 U. S., 1;
U. S. v. E. C. Knight Co., 156 U. S., 1;
Joyce v. Auton, 179 U. S., 591 at 594;
Capitol City Dairy Co. vs. Ohio, 183 U. S., 238, 245.

Buchanan v. Warley (245 U. S., 60 at 73) is, no doubt, authority supporting the right of Terrace to invoke this treaty provision, were the act in conflict with the treaty, but it is not.

Aliens may only come to the United States upon such conditions and terms as our Government sees fit to impose. By the treaty, the right to lease real estate in the United States for agricultural
27 purposes is withheld. (Hauenstein v. Lynham, 100 U. S., 483.) It might have been, by Congressional enactment, prohibited (U. S. v. Repontigney, 72 U. S., 211); but, by the treaty, it was neither granted nor prohibited. It was merely withheld, which

left the State free to prohibit it. The United States might have excluded all of the subjects of Japan; but rather chose to admit them, withholding the right to lease agricultural lands, thereby recognizing the right of the State to prohibit it, or regulate it. That purpose is not to be defeated by allowing the citizen land owner the broad construction of his rights under the Fourteenth Amendment for which contention is made. The citizen land owner may sell to whom he pleases; but he may not sell to one who is rightfully forbidden the right to buy.

That the Fourteenth Amendment was not intended as an instrument to accomplish the end here sought, is shown by legislation early enacted by Congress to give effect to the Fourteenth Amendment, the primary purpose of which was the enfranchisement of the slaves.

Slaughter-House cases, 16 Wall. (83 U. S.), 36;
Buchanan v. Warley, 245 U. S., 60 at 76 & 78.

By the amendment, members of the enfranchised race were made citizens of the nation and state of their residence, a privilege at present denied to the subjects of Japan.

"In giving legislative aid to these constitutional provisions Congress enacted in 1866, c. 31, sec. 1, 14 Stat. 27, (Rev. Stats. sec. 1978) that:

" 'ALL CITIZENS of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, PURCHASE, LEASE, SELL, HOLD, AND CONVEY REAL AND PERSONAL PROPERTY.'

"And in 1870, by c. 114, sec. 16, 16 Stat., 144, (Rev. Stats., sec. 1977) that:

"ALL PERSONS within the jurisdiction of the United States
28 shall have the same right in every State and Territory TO MAKE AND ENFORCE CONTRACTS, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and no other." (Buchanan v. Warley, 245 U. S., 60 at 78.) (Italics those of this court.)

These statutes show that Congress then understood the Fourteenth Amendment did not forbid the State the right to deny ownership of lands within its boundaries to aliens.

The act of 1897 (U. S. Comp. Stats. secs. 3490-3495), prohibiting the ownership of land by aliens in the territories of the United States, provides that the denial of such rights shall not apply to any alien who shall become a bona fide resident of the United States. By section 3491 Comp. Stats., Congress gave all alien bona fide residents, including the Japanese, rights denied by the act in question; but it is limited to the territories and has no application in the states.

The court in Buchanan v. Warley (supra), holding the State stat-

ute unconstitutional, accentuated the fact that the discrimination of the statute was "solely because of color" and, again, "this interdict is based wholly upon color, simply that and nothing more."

In the course of the controversy between the State Department and the Minister for Foreign Affairs of the Empire of Japan over the validity of the California statute under the treaty already mentioned, the legal adviser for the State Department said:

"* * * the statute contains no discrimination against Japanese as such, but applies equally to all aliens not eligible to citizenship." (Annex No. 8," p. 24, "Aide Memoire, Wash., July 16, 1913," "Controversy—United States and Japan—California Question."

29 Still less does the Washington act discriminate against the Japanese for it provides that

"'alien' does not include an alien who has in good faith declared his intention to become a citizen of the United States."

The prohibition by this definition is made applicable to all aliens, both those eligible, and those not eligible to citizenship, provided that they have not declared their intention to become citizens. To this extent, the present suit is to be distinguished from In re Ah Chong (2 Fed., 733).

In the latter case, Judge Sawyer held invalid a California law providing:—

"' * * * All aliens incapable of becoming electors of this state are hereby prohibited from fishing, or taking any fish, lobsters, shrimps, or shell-fish of any kind, for the purpose of selling or giving to another person to sell. Every violation of the provisions of this act shall be a misdemeanor, punishable upon conviction by a fine of not less than $25., or by imprisonment in the county jail for a period of not less than thirty days." (at p. 734).

Of this act, the court says:—

"* * * To exclude the Chinaman from fishing in the waters of the state, therefore, while the Germans, Italians, Englishmen, and Irishmen, who otherwise stand upon the same footing, are permitted to fish ad libitum, without price, charge, let, or hinderance, is to prevent him from enjoying the same privileges as are 'enjoyed by the citizens or subjects of the most favored nation'; and to punish him criminally for fishing in the waters of the state, while all aliens of the Caucasian race are permitted to fish freely in the same waters with impunity and without restraint, and exempt from all punishments, is to exclude him from enjoying the same immunities and exemptions 'as are enjoyed by the citizens or subjects of the most favored nation'; and such discriminations are in violation of articles 5 and 6 of the treaty with China, cited in full in Parrott's case. The same privileges which are granted to other aliens, by treaty or otherwise, are secured to the Chinaman by the stipulations of the

treaty. Conceding that the state may exclude all aliens from fishing in its waters, yet if it permits one class to enjoy the privilege it must permit all others to enjoy, upon like terms, the same privileges, whose governments have treaties securing to them the enjoyment of
30 all privileges granted to the most favored nations.

"The fourteenth amendment of the national constitution provides that 'no state shall * * * deny to any person within its jurisdiction the equal protection of the laws'. To subject the Chinese to imprisonment for fishing in the waters of the state, while aliens of all European nations under the same circumstances are exempt from any punishment whatever, is to subject the Chinese to other and entirely different punishments, pains, and penalties than those to which others are subjected, and it is to deny to them the equal protection of the laws, contrary to those provisions of the constitution." (at pp. 736 & 738).

The present case is not only to be distinguished from the Chong case because of the fact that the present law is made applicable to all aliens and there is no punishment by imprisonment or a fine of the alien grantee of lands, but the case is to be further distinguished because of the fact that the treaty with Japan does not contain, as to land ownership, the "most favored nation" clause or any language of such import.

The Fourteenth Article of the treaty contains the general favored nation clause:—

"EXCEPT AS OTHERWISE EXPRESSLY PROVIDED in this Treaty, the High Contracting Parties agree that, IN ALL THAT CONCERNS COMMERCE AND NAVIGATION, any privilege, favor or immunity which either Contracting Party has actually granted, or may hereafter grant, to the citizens or subjects of any other State shall be extended to the citizens or subjects of the other Contracting Party gratuitously if the concession in favor of that other State shall have been gratuitous, and on the same or equivalent conditions, if the concession shall have been conditional." (37 Stats. at L., 1507). (the italics are those of this court).

In view of the limitation of this clause to "all that concerns commerce and navigation", it is clear that the privileges secured by Article XIV. do not apply to the limited rights granted by Article I., already quoted, in which the right to lease land is limited to that for residential and commercial purposes.

31 Neither Guinn and Beal v. United States (238 U. S., 347) nor Myers v. Anderson (238 U. S., 368) have any application to the present controversy for, if it be granted that the present law is aimed primarily at the so-called yellow, or brown races of the Orient, the result is the same. There is no restriction upon the authority of Congress to discriminate in the matter of the eligibility of an alien to become a citizen because of color. The Fifteenth Amendment provides that the right of a citizen of the United States to vote shall not be denied or abridged by the United States or by any

State on account of race, color or previous condition of servitude. The Fourteenth Amendment made the Negroes citizens.

It is obvious that the objection on the part of Congress is not due to color, as color, but only to color as an evidence of a type of civilization which it characterizes. The yellow or brown racial color is the hallmark of the Oriental despotisms, or was at the time the original naturalization law was enacted. It was deemed that the subjects of those despotisms, with their fixed and ingrained pride in the type of their civilization, which works for its welfare by subordinating the individual to the personal authority of the sovereign, as the embodiment of the State, were not fitted and suited to make for the success of a republican form of Government. Hence they were denied citizenship. (In re Ah Yup, Case No. 104, 1 Fed. Cases, p. 223). It is this disqualification put upon them by the Federal Government to which the State objects and not their color, although the Federal Government may have made their race-color the irrefutable evidence of disqualification for citizenship.

Congress in withholding the right to citizenship from these Oriental races, no doubt, recognized, as statesmen long have done,
32 that it was of the essense of its duty to insure the perpetuation of our own type of civilization. It has been well said:—

"The last two generations have seen an enormous change in the vision of life, wider and deeper than it has ever been comprehended before, and as our knowledge has grown, the narrow utilitarianism has shrivelled off us and we see the use and value and nobility of lands and ages far outside the scope of our forefathers. * * * We do not look on them as wrong in differing from ourselves. We begin to understand that they are each adapted to the country and people to which they belong and we are not so certain that we can improve everybody by trying to make them imitate us."

The sympathetic and temperate view here expressed, no doubt, should restrain us from forcing our civilization upon alien types. Yet it lessens no jot or tittle the duty of the court to hold impregnable the barrier erected by Congress to preserve, in its purity, our own type of civilization. The more homogen-ous its parts, the more perfect the union. It may be that the changes wrought in the Orient in the last fifty or seventy-five years now warrant a different policy; but there is no law or treaty that yet has said "the twain shall meet"; or that, if citizenship be accorded these Orientals, the danger is past of our becoming a "mechanical medley of race fragments."

It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of the state, and, so lacking, the State may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the State might pass to the ownership or possession of non-citizens. Such a result would leave the foundation of the State but a pale shadow, and the structure erected thereon but a Tower of Babel from which the ten-

ants in possession might, when the shock of war came, bow
33 themselves out because they were not bound as citizens to defend the house in which they lodged.

This is no new thing. Tribal laws of the progenitors of the Anglo-Saxons, while still upon the continent, made an estate in lands, similar to a freehold, a prerequisite to a voice in the tribal government. The "free-necked-man," or "freeman" was synonymous with "free-holder." They were interdependent. A freeman had a vote in determining tribal policies and no one was a freeman without an estate in lands. (Green's History of the English People, Book 1, Chap. I, Subhead "The Land.") The recognition of this principle has run throughout the history of our race and its governments.

Section 33, Article II of the constitution of the State of Washington provides:

"The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition."

In Oregon Mortgage Co. v. Carsten's (16 Wash., 165) it was held that an alien corporation which had taken a mortgage had the right to take a deed to the mortgaged land from the citizen mortgagor. As the above section excepts from its prohibition lands acquired "under mortgage or in good faith in the ordinary course of justice in the collection of debts," the court held that this exception did not require "a proceeding in court in the case of a mortgaged debt."

Goon Gan v. Richardson (16 Wash., 373) was also an alien mortgagee case in which the court held that the incapacity to own
34 land can only be shown at the suit of the State.

State ex rel. Winston v. Morrison (18 Wash., 664) was a suit in which the court held a ninety-nine year lease of real estate amounted to "ownership" as that word was used in the above quoted section.

In State ex rel. Winston vs. The Hudson Land Co. (19 Wash., 85) the holding was the same as to a forty-nine year lease.

In Morrell vs. Superior Court (33 Wash., 542) it was held that an alien corporation could not acquire real estate in the State of Washington by eminent domain.

Abrams vs. State of Washington (45 Wash., 327) held that the grantor in a deed of real estate to an alien could not recover the real estate; that the State, alone, could invoke rights on account of the

lisability of the grantee under the above section and that the alien having died before the State sought to escheat the lands, the heirs, although themselves aliens, were entitled to inherit the lands, as well as citizens, under the express exception in the constitution and that the State, to succeed, must proceed while the lands were still in possession of the alien wrongfully acquiring them.

In State ex rel. Atkinson vs. World Real Estate Commercial Co. (46 Wash., 104) it was held that, as the alien had conveyed the lands prior to the institution of proceedings to escheat, the State had lost such right.

Prentice vs. How (84 Wash., 136) was a decision to the same effect.

In State ex rel. Tanner vs. Staeholi (12 Wash. Dec., 288) decided September 3, 1920, the lands were escheated, although the
35 alien had, at the time of acquiring the land, believed himself a citizen and had, in good faith, exercised the rights and privileges of citizenship and had, after the proceedings of the State to escheat, filed his declaration to become a citizen.

State ex rel. Tanner v. Rychen (13 Wash. Dec., 95, decided November 1, 1920, is a decision to the same effect.

From the foregoing, it is clear that the Supreme Court of Washington has held the common law only changed by this constitutional provision to the extent plainly exercised therein. The exceptions in the constitutional provision constitute a grant to the alien and, of course, are not subject to legislative change or limitation, at least by the State. But it does not follow because the constitution prohibits alien "ownership" of lands with certain exceptions, that, the constitution not having defined what shall constitute ownership, the legislature may not do so. The legislature is not bound to leave the courts to speculate upon that subject. In fact, the act of the legislature but follows the common law:

"But as to a lease for yeares, there is a diversitie betweene a lease for yeares of a house for the habitation of a merchant stranger being an alien, whose king is in league with ours, and a lease for yeares of lands, meadows, pastures, woods and the like. For if he take a lease for yeares of lands, meadows, etc. upon office found, the king shall have it. (6.) But of a house for habitation he may take a lease for yeares as incident to commerce; for without habitation he cannot merchandise or trade. (7) But if he depart, or relinquish the realme, the king shall have the lease. So it is if he die possessed thereof, neither his executors or administrators shall have it, but the king, (8) for he had it only for habitation as necessary to his trade or traffique and not for the benefit of his executor or administrator. But if the alien be no merchant, then the king shall have the lease for yeares, albeit it were for his habitation (9); and so it is if he be an alien enemie. And all this was so resolved by the judges assembled together for that purpose in the case of Sir James Croft, Pasch 29, of the raigne of queene Elizabeth." (Coke upon Littleton, Book 12 *b.*)

The most the act in question does is no more than to invoke a rule of strict construction against the alien as to the meaning of the word "ownership" as appearing in the constitution.

We find the other questions raised as to the validity of
36 *of* this statute to be without merit.

The preliminary injunction prayed is denied.

Concurring: Gilbert, C. J. and Neterer, D. J.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division. July 25, 1921. F. M Harshberger, Clerk, by Ed. M. Lakin, Deputy.

37 United States District Court, Western District of Washington Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Order Granting Leave to File an Amended Bill of Complaint.

On motion of the plaintiffs above named, it is ordered that leave be, and the same hereby is given plaintiffs, to file an amended Bill of Complaint herein.

Done in open Court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

38 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Amended Complaint.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, sitting in equity:

Frank Terrace and Elizabeth Terrace, his wife, citizens of the United States and of the State of Washington and residents of the Western District of Washington, and N. Nakatsuka, a subject of the Emperor of Japan, born in the Empire of Japan, of Japanese parents, and a resident of the Western District of Washington, bring their amended bill of complaint against Lindsay L. Thompson, as Attorney General of the State of Washington, a citizen of the United States and of the State of Washington, and a resident of the Southern Division of the Western District of Washington.

And thereunto the plaintiffs bring their amended complaint and show unto your Honors as follows:

I.

That plaintiffs suing, on behalf of themselves and others similarly situated, bring this amended bill of complaint against said Lindsay L. Thompson as the duly elected, qualified and acting Attorney General of the State of Washington.

II.

39 That the value of the matter in dispute herein between each plaintiff and the defendant exceeds the sum of $3,000.00, exclusive of interest and costs.

The jurisdiction of this Honorable Court is invoked because of and by reason of the Federal question involved in this suit and equity jurisdiction, and because plaintiffs have no adequate remedy at law.

III.

That the Plaintiffs Terrace are now and for a number of years last past have been the owners of the following described real estate lying and being in King County, State of Washington, to-wit:

The southwest quarter (S. W. ¼) of the Southeast quarter (S. E. ¼) and lot Five (5) of Section Thirty-six (36) Township Twenty-three (23) North, Range Four*t* (4) East of the Wil-amette Meridian.

That said real estate is particularly adapted to raising vegetables, and for a number of years last past has been, and is now being devoted to that and agricultural purposes. That the plaintiff N. Nakatsuka is a capable farmer and is in all respects a desirable person to become a tenant of said real estate. The *the* plaintiffs Terrace desire to lease said real estate to the plaintiff N. Nakatsuka for the period of five years, and the plaintiff N. Nakatsuka desires to accept such lease, and but for the Act of the State of Washington, hereinafter specifically mentioned, the plaintiffs would execute a lease of said real estate fron the plaintiffs Terrace to the plaintiff N. Nakatsuka for a perioa of five years from this date. N. Nakatsuka, in addition to being a capable farmer, is engaged in the business of trading, wholesale and retail, in farm products, and shipping the same in intrastate, interstate and foreign commerce, and, instead of purchasing such farm products, he has produced and desires to continue to produce his own farm products for the purpose of selling them in the said *said* wholesale and retail trade, and if he is prevented from leasing land for the purpose of producing such farm products for such trade he will be prevented from engaging in trade and the incidents to trade as he is authorized to do under the treaty hereinafter mentioned.

IV.

That there was enacted by the Legislature of the State of Washington, in the year 1921, an Act entitled "An Act relating to the rights and disabilities of aliens with respect to lands, providing for forfeitures in certain cases, prescribing penalties, and repealing Sections 135 and 136 of Pierce's Code 8775 and 8776 of Remington & Ballinger's Annotated Codes and Statutes of Washington," approved March 8, 1921.

V.

That the defendant Lindsay L. Thompson, as the Attorney General of the State of Washington, has threatened to, and will enforce said Act in each and all of its terms, and the whole thereof, and particularly against these plaintiffs in the event that they enter into a lease of said real estate for the purpose and terms aforesaid will forfeit or attempt to forfeit such leasehold interest to the State of Washington, and will prosecute these plaintiffs criminally for an alleged violation of said Act, above mentioned, and the said Act is of its terms so drastic, and the penalties attached to a violation of the terms thereof are so great, that neither of these plaintiffs may make or execute such lease, even for the purpose of testing the constitutionality and validity of said Act *for* the Legislature above mentioned, and unless this Court shall determine the validity of said Act in this proceeding, said plaintiffs will be compelled to submi

to said Act whether the same be valid or invalid, and thereby be deprived of their property without due process of law and
41 denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States, and the plaintiffs have no adequate remedy at law, but are relievable only in a court of equity.

VI.

That said Act of the Legislature of the State of Washington above mentioned, is in violation of and contrary to Section 33 of Article II of the Constitution of the State of Washington; and protection of the provisions of said Section are hereby expressly invoked by the plaintiffs and each of them.

VII.

That said Act of the Legislature of the State of Washington, above mentioned, is in violation of and contrary to the existing Treaty between the United States of America and the Empire of Japan, and particularly Article I thereof, in that it prohibits subjects of the Emperor of Japan from leasing land for residential and commercial purposes, and from doing everything incident to or necessary for trade upon the same terms as native citizens of the United States of America; and the protection of said Treaty and of Article I thereof is especially invoked by these plaintiffs and each of them.

VIII.

That said Act of the Legislature of the State of Washington is in contravention of Section 3 of Article I of the Constitution of the State of Washington in that it deprives these plaintiffs of property without due process of law; is in contravention of Section 12 of Article I of the Constitution of the State of Washington in that it grants privileges or immunities which upon the same terms do not equally belong to all citizens; and protection of the provisions of said Sections of Article I of the Constitution of the State of Washington is hereby specially invoked by the plaintiffs and each of them.

42 IX.

The said Act of the Legislature of the State of Washington above mentioned, is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives the plaintiffs of property without due process of law and denies to them and each of them the equal protection of the law; and protection of said Section 1 of the Fourteenth Amendment to the Constitution of the United States is hereby specially invoked by the plaintiffs and each of them.

X.

That if the plaintiffs are not permitted to enter into a lease of said real estate, as aforesaid, and on the terms above mentioned, a large and irreparable loss will occur to them and each of them, and the plaintiffs have no adequate remedy at law but are relievable only in a court of equity.

Inasmuch as plaintiffs and each of them have no adequate remedy in the premises by the strict rules of law and can obtain relief only in a court of equity where matters and things of the kind and character hereinbefore stated are perfectly cognizable and relievable, and to the end that they and each of them may have relief which they and each of them can only obtain in a court of equity, they and each of them pray:

1. That Lindsey L. Thompson, as Attorney General of the State of Washington be enjoined and restrained, provisionally, preliminarily and perpetually by the order and injunction of this Court from bringing, directly or indirectly, and from permitting to be brought directly, or indirectly, any proceedings at law or in equity for the purpose of enforcing said Act of the Legislature of the State of Washington, above mentioned, against these plaintiffs, or either of them, upon their executing or attempting to execute a lease
43 of real estate above mentioned for the above mentioned term or any other person, or corporation similarly situated and from causing the plaintiffs, or either of them, or any other person or corporation similarly situated, to be arrested for violating the terms and provisions of said Act, and from taking any other action in any other manner to prevent or interfere with the complainants or either of them, from executing and delivering such lease on said real estate, and that an order to show cause issue herein upon application of the plaintiffs herein directed to the above named defendant requiring him to show cause why a temporary injunction should not issue as prayed for herein, and that a temporary restraining order may issue pending the hearing of said show cause order.

2. That upon the hearing the aforesaid Act passed by the Legislature of the State of Washington be declared to be unconstitutional illegal and void and that a perpetual injunction be issued restraining the enforcement thereof as hereinabove prayed for.

3. That a writ of subpœna may issue to defendant requiring him to answer this amended bill of complaint fully and truthfully, but not on oath, an oath hereby being waived, and that further and general relief be granted as the nature of plaintiffs' case may require or to equity may seem meet.

JAMES B. HOWE.
E. H. GUIE.
DALLAS V. HALVERSTADT.

44 THE UNITED STATES OF AMERICA,
Western District of Washington,
Southern Division, ss:

Frank Terrace and N. Nakatsuka, each being first duly sworn, on oath deposes and says for himself: I am one of the plaintiffs named in the foregoing amended bill of complaint; I have read the foregoing amended bill of complaint, know the contents thereof, and the same is true to my own knowledge; that I make this verification in behalf of my co-plaintiff as well as in my own behalf.

FRANK TERRACE.
N. NAKATSUKA.

Subscribed and sworn to before me this 3rd day of November, 1921.

[Notarial Seal.] E. H. GUIE,
Notary Public in and for the State of Washington, Residing at Seattle.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 18, 1921. F. M. Harshberger, Clerk, by Ed M. Lakin, Deputy.

45 In the United States District Court for the Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

—

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Motion to Dismiss.

Comes now the defendant, Lindsay L. Thompson, as Attorney General of the State of Washington, and moves the court to dismiss the amended bill of Complaint filed herein for the reasons and upon the ground that, as appears upon the face thereof;

1. Said bill of complaint does not state any matters of equity entitling the plaintiffs, or any of them, to the relief prayed for.

2. Said bill of complaint does not state facts sufficient to entitle plaintiffs, or any of them, to any relief against this defendant;

3. The plaintiffs, and each of them, have a plain, adequate, complete and speedy remedy at law.

Wherefore defendant prays the judgment of this court whether he shall further answer and that he be dismissed with his costs.

L. L. THOMPSON,
Attorney General,
Solicitor for Defendant.

Copy of within motion to dismiss received and service acknowledged this — day of November, 1921.

JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Plaintiffs.

46 Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 18, 1921. F. M. Harshberger, Clerk, by Ed M. Lakin, Deputy.

47 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Order Denying Injunction Pendente Lite.

This cause came on regularly to be heard before the Honorable W. B. Gilbert, United States Circuit Judge, Honorable Edward E. Cushman and Honorable Jeremiah Neterer, United States District Judges at the City of Tacoma, Washington, upon the application of the complainants for a temporary injunction herein, the plaintiffs appearing and being represented by their solicitors, Messrs. James B. Howe, E. H. Guie and Dallas V. Halverstadt, the Defendant being represented by Lindsay L. Thompson, as Attorney General of the State of Washington, and the Court having heard the arguments of counsel and being fully advised in the premises,

It is ordered that the application of the plaintiffs for a temporary injunction herein, be, and the same hereby is, denied.

Done in open Court this 13th day of December, 1921.

EDWARD E. CUSHMAN.

O. K. as to form.
L. L. THOMPSON,
Solicitor for Defendant.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, By Ed M. Lakin, Deputy.

48 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiff-,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Judgment of Dismissal.

This cause came on for hearing before the court on the 13th day of December, 1921, upon the motion of the defendant above named to dismiss the amended bill of complaint herein, the plaintiffs appearing by their solicitors, Messrs. James B. Howe, E. H. Guie and Dallas V. Halverstadt, the defendant appearing by Lindsay L. Thompson, as Attorney General of the State of Washington, and after argument, and the court being fully advised in the premises,

It is ordered that the motion of the defendant to dismiss said action, be and the same hereby is granted, and that defendant do have and recover his costs and disbursements herein to be taxed to which the plaintiffs and each of them except and their exceptions are hereby allowed.

Done in open court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, By Ed M. Lakin, Deputy.

O. K. as to form.

L. L. THOMPSON,
Solicitor for Defendant.

49 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Wash ington, Defendant.

Petition for Allowance of Appeal.

The above named Frank Terrace and Elizabeth Terrace, his wif and N. Nakatsuka, appellants, conceiving themselves aggrieved b the judgment and order of the United States District Court, in th above entitled cause, rendered on the 13th day of December, 192 denying the motion of complainants for a temporary injunction i said cause, and granting the motion of the appellee to dismiss sai cause, do hereby appeal from said judgment and order to the S preme Court of the United States and pray that this, their appe may be allowed, and that a transcript of the record and proceedin in said cause, and all things concerning the same upon which sa order and judgment were made, duly authenticated, may be sent the Supreme Court of the United States in order that the errors co plained of in the assign*emtn* of erro-s herein filed by said appellan may be reviewed, and if error be found, corrected according to t laws and customs of the United States.

JAMES B. HOWE.
E. H. GUIE.
DALLAS V. HALVERSTADT.

Indorsed: Filed in the United States District Court, Weste District of Washington, Southern Division, Dec. 14, 1921. F. Harshberger, Clerk, By Ed M. Lakin, Deputy.

50 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiff-,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Assignment of Error-.

Come now the appellants in the above entitled cause and aver and show that in the records and proceedings in said cause the United States District Court for the Western District of Washington, Southern Division, erred to the grievious injury and wrong of the appellants in said cause and to the prejudice, and against the right of the appellants herein in the following particulars, to-wit:

I.

In denying a temporary injunction in said cause.

II.

In denying a permanent injunction in said cause.

III.

In granting the motion of the defendant to dismiss said action.

IV.

In enterning judgm-nt dismissing said action.

V.

In holding that Cnapter 50, of the Session Laws of the State of Washington for the year 1921, being an Act entitled: "An Act relating to the rights and disabilities of aliens with respect to lands, providing for forfeitures in certain cases, prescribing penalties, and repealing sections 135 and 136 Pierce's Code, 8775 and 8776 of Remington and Ballinger's Annotated Codes and Statutes of Washington," does not deprive the appellants of their property
51 without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VI.

In holding that said Chapter 50 of the Laws of the State of Washington for the year 1921 does not deny the appellants the equal protection of the law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VII.

In holding that said Chapter 50 of the Laws of the State of Washington for the year 1921 does not deprive the appellants of their property without due process of law, contrary to Section 3 of Article 1 of the Constitution of the State of Washington.

VIII.

In holding that said Chapter 50 of the Session Laws of the State of Washington for the year 1921 does not grant citizens privileges or immunities which upon the same terms do not fully apply to all citizens of the State of Washington, contrary to Section 12 of Article I of the Constitution of the State of Washington.

IX.

In holding that said Chapter 50 of the Session Laws of the State of Washington for the year 1921 is not in violation of and contrary to Section 33 of Article II of the Constitution of the State of Washington.

X.

In holding that said Chapter 50 of the Session Laws of the State of Washington for the year 1921 is not in violation of and contrary to the existing Treaty between the United States of America and the Empire of Japan, and particularly Article I thereof.

Wherefore, for these and other manifest errors appearing
52 in the record, the appellants pray that the judgment of the United States District Court for the Western District of Washington, Southern Division, be reversed and set aside and held for naught, and that judgment be rendered for the appellants herein granting to them their rights under the Constitution of the United States and the Constitution of the State of Washington and the Treaty existing between the United States of American and the Empire of Japan.

JAMES B. HOWE.
E. H. GUIE.
DALLAS V. HALVERSTADT.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

53 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Order Allowing Appeal.

It is hereby ordered that the appeal prayed for by the above named appellants in the above entitled cause to the Supreme Court of the United States be, and the same hereby is, allowed as prayed.

Done in open Court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

54 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRANCE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the States of Washington, Defendant.

Order Fixing Amount of Bond on Appeal.

On reading the petition of the above named appellants in the above entitled cause for the allowance of an appeal to the Supreme Court of the United States from the judgment and order of the District Court of the United States for the Western District of Washington, Southern Division, rendered herein,

It is ordered that the appellants above named execute and file in the office of the Clerk of the above entitled Court a bond on appeal, conditioned according to law, in the sum of $500.00, with good and sufficient surety to be approved by the undersigned.

Done in open Court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 14, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

55 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Appeal Bond.

Know all men by these presents: That we, Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, appellants above named, as principals, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and authorized to do business as a surety in the State of Washington, as surety, are held and firmly bound unto Lindsay L. Thompson, as Attorney General of the State of Washington, in the full and just sum of $500.00, for the payment of which well and truly to be made, we hereby bind our and each of our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Seattle, Washington, this 13th day of December, 1921.

The condition of the foregoing obligation is such that,

Whereas, the appellants above named have duly appealed from the final judgment and order herein to the Supreme Court of the United States; and

Whereas, the above entitled Court fixed the amount of bond to be given by said appellants upon said appeal in the sum named as the penalty of this bond; and

Now, therefore, if the appellants shall prosecute their appeal to effect and if they fail to make their plea good shall answer
56 all costs, this obligation shall be null and void; otherwise to remain in full force and effect.

FRANK TERRACE,
ELIZABETH TERRACE,
N. NAKATSUKA,
By JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Their Attorneys.

[Corporation Seal.] NATIONAL SURETY COMPANY,
By GEO. W. ALLEN,
Resident Vice President.

Attest:
ROLLO V. WHYTE,
Resident Assistant Secretary.

The above and foregoing bond and the surety th-reon is approved this 13th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Dec. 14, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

57 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Citation.

UNITED STATES OF AMERICA:

The President of the United States to Lindsay L. Thompson, as Attorney General of the State of Washington, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, within sixty (60) days after the date of

this citation, pursuant to an appeal allowed and filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, are appellants and you are the appellee, to show cause, if any there be, why the judgment and order rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward E. Cushman, United States District Judge for the Western District of Washington, Southern Division, and the seal of said United States District Court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington, Southern Division.

58 Indorsed: Filed in the United States District Court, Western District of Washington, Southern *Washington,* Dec. 14,
1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

59 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Acceptance of Service.

Due, regular and timely service of the Citation on appeal in the above entitled cause from the United States District Court for the Western District of Washington, Southern Division, to the Supreme Court of the United States, of the præcipe for record on appeal in said cause, of the petition for allowance of appeal, of the assignment of errors, of the order fixing amount of Bond on appeal, and of the appeal bond in said cause, is hereby admitted this 15th day of December, 1921.

L. L. THOMPSON,
Solicitor for Appellee.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 16, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

60 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Præcipe for Record on Appeal.

To the Clerk of the above entitled Court:

Please make and certify on appeal to the Supreme Court of the United States a record which includes the following files, to-wit:

Bill of Complaint.
Motion for termporary injunction.
Order fixing date for hearing of motion for temporary injunction.
Notice of hearing of motion for temporary injunction.
Affidavit of defendant in opposition to motion for *for* temporary injunction.
Motions to dismiss of defendant to dismiss bill of complaint.
Opinion of Court on application for temporary injunction.
Amend bill of Complaint.
Order granting leave to file amended bill of complaint.
Motion to dismiss amended bill of complaint.
Order denying injunction pendente lite.
Judgment of dismissal.
Petition for allowance of appeal.
Assignment of errors.
Order allowing appeal.
Order fixing amount of bond on appeal.
Bond on appeal.
Citation.
Acceptance of service.
This præcipe, with acceptance of service thereof.

JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Appellants.

Service hereof and receipt of copy is acknowledged this
61 22 day of December, 1921.

L. L. THOMPSON,
Solicitor for Appellee.

Indorsed: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 24, 1921. F. M. Harshberger, Clerk, by Ed. M. Lakin, Deputy.

62 *Certificate of Clerk of United States District Court of Transcript of Record.*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing and attached is a full, true and correct transcript of the record and proceedings in the case of Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, Plaintiffs, versus Lindsay L. Thompson, as Attorney General of the State of Washington, Defendant Cause No. 132-Equity in said District Court, as required by præcipe of counsel filed and shown herein and as the originals thereof appear on file and of record in my office in said District at Tacoma.

I further certify that I attach hereto the original Citation on Appeal with acceptance of service thereon.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the appellants for making the record, certificate and return to the Supreme Court of the United States in the above entitled cause, to-wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making record and return 139 folios @ 15¢ each	$20.85
Certificate of Clerk to Transcript, 2 folios at 15¢ each and seal	.50
	$21.35

Attest my hand and the seal of said District Court at Tacoma, in said District, this 12th day of January, A. D. 1922.

F. M. HARSHBERGER,
Clerk,

By ALICE HUGGINS,
Deputy Clerk.

63 United States District Court, Western District of Washington, Southern Division.

In Equity.

No. 132.

FRANK TERRACE and ELIZABETH TERRACE, His Wife, and N. NAKATSUKA, Plaintiffs,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington, Defendant.

Citation.

UNITED STATES OF AMERICA:

The President of the United States to Lindsay L. Thompson, as Attorney General of the State of Washington, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, within sixty (60) days after the date of this citation, pursuant to an appeal allowed and filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, are appellants and you are the appellee, to show cause, if any there be, why the judgment and order rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward E. Cushman, United States District Judge for the Western District of Washington, Southern Division, and the seal of said United States District Court this 13th day of December, 1921.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington, Southern Division.

Endorsed on cover: File No. 28,761. W. Washington D. C. U. S. Term No. 302. Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, appellants, vs. Lindsay L. Thompson, attorney general of the State of Washington. Filed March 11th, 1922. File No. 28,761.

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1922.

No. 302.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

v.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

MOTION TO POSTPONE ARGUMENT

L. L. THOMPSON,
Solicitor for Appellee.

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1922.

No. 302.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

v.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

PROOF OF MAILING MOTION

State of Washington, } ss.
County of Thurston. }

The undersigned, being first duly sworn, deposes and says: That on December , 1922, at Olympia, Washington, I deposited in the United States Postoffice, in a sealed envelope addressed to Dallas V. Halverstadt, 306 Marion Building, Seattle, Washington, solicitor for appellants herein, a true copy of the motion to postpone argument and notice, postage fully prepaid thereon.

Subscribed and sworn to before me this..... day of December, 1922.

Notary Public in and for the State of Washington, residing at Olympia.

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1922.

No. 302.

FRANK TERRACE AND ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

v.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

MOTION TO POSTPONE ARGUMENT

The appellee, Lindsay L. Thompson, as attorney general of the State of Washington, moves that this case be not heard by this court prior to March 20, 1923, and, if possible, that it be not heard before April 20, 1923, for the following reasons, to-wit:

1. This case is an appeal from a final decree of the United States District Court for the Western District of Washington, in which decree the court

dismissed the bill of complaint in which was sought an injunction restraining the appellee, the attorney general of the State of Washington, from enforcing or attempting to enforce the provisions of an act passed by the legislature of said state, commonly known as the alien land act.

2. There is also pending an appeal to this court three certain actions entitled *Porterfield et al. v. Webb et al.*, No. 299; *Webb et al. v. O'Brien et al.*, No. 267, and *Frick et al. v. Webb et al.*, No. 555, October Term, 1922. These actions were, in the spring of 1922 heretofore advanced for hearing before this court to a day certain, to-wit: to November 13, 1922, which date was subsequently changed to November 27, 1922. These cases involve the construction and validity of a certain statute of California known as the California alien land law, which act is in many respects similar to the Washington act involved in the present action, and there are therefore involved for determination in the four cases a number of similar questions.

3. Upon September 20, 1922, appellants herein moved that this case be advanced for hearing so that it might be heard upon the same day as is heard the case of *Porterfield v. Webb*, No. 299, heretofore referred to, which motion was thereafter granted by this court. Appellee herein consented to the granting of said motion, and the advancement of this cause for hearing upon the understanding that the case of *Porterfield v. Webb* would come on for hearing be-

fore this court in the month of November, 1922, and had he known that said case might be argued at some date subsequent to January 8, 1923, and prior to March 20, 1922, he would not have consented to said advancement. Thereafter, and shortly prior to November 27, 1922, this court vacated its order setting said cases for argument upon November 27, 1922, and ordered that said cases be heard before the full court upon a date to be thereafter determined.

4. Appellee is represented herein by L. L. Thompson, attorney general of the state of Washington, who has personally handled this case since its inception, both in the District Court and in this court, and he has no other counsel who are familiar with the issues or matters herein involved. The legislature of the state of Washington will convene upon January 8, 1923, and will continue in continuous session thereafter until March 8, 1923. Under the constitution and laws of the state of Washington the said L. L. Thompson is the legal adviser of the members of said legislature. Many of the matters which will arise at the session of said legislature are of such a nature as to require the personal attention and consideration of the attorney general, and it will therefore be very difficult, if not impossible, for him to leave the state of Washington between said dates. If the case, therefore, is called for argument during that time, appellee will probably not be represented by counsel at the oral argument, to his prejudice and

to the prejudice of the people of the state of Washington, who are the real parties in interest herein.

5. Appellee has been advised by the Hon. U. S. Webb, attorney general of the state of California, who appears in behalf of the state of California in the cases referred to in paragraph 2 hereof, that if this case is set for argument at some date late in April, he will move that the California cases be heard upon the same date, but that he does not desire to have said cases heard during the month of March or early in April on account of the fact that the legislature of California will be in session during that time. In consequence whereof, appellee has suggested that if it is feasible, the cases be heard during the latter part of April to the end that all of said cases may be heard at the same time and all of the parties involved may have an adequate opportunity to be heard.

Appellee therefore respectfully urges that this motion be granted.

L. L. THOMPSON,
Attorney General,
Solicitor for Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1922.

No. 302.

FRANK TERRACE AND ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

v.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

PLEASE TAKE NOTICE that on Monday, January 8, 1923, at 12:00 o'clock noon, or as soon thereafter as counsel may be heard, L. L. Thompson, as attorney general of the state of Washington, the appellee in the above entitled cause, will submit to the Supreme Court of the United States a motion, a copy of which is attached hereto, petitioning said court to postpone the argument of the above entitled cause.

Dated December 30, 1922.

L. L. THOMPSON,
Solicitor for Appellee.

To: JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Appellee,
Seattle, Washington.

No. 302.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division

Motion to Advance

JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Appellants.

No. 302.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division

Motion to Advance

The appellants, Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, move that this case be advanced for hearing upon the same day as is heard the case of *Porterfield vs. Webb,* No.

299, October Term, 1922, for the following reasons, to-wit:

1. This case is an appeal from a final decree of the United States District Court for the Western District of Washington, in which decree the court dismissed the bill of complaint in which was sought an injunction restraining the appellee, the Attorney General of the State of Washington, from enforcing or attempting to enforce the provisions of an act passed by the legislature of the State of Washington in the year 1921, commonly known as the Alien Land Act, which act is claimed by appellants to be in violation of the Constitution of the United States and a certain treaty entered into between the United States and the Empire of Japan.

2. There is pending on appeal in this court that certain action entitled *"Porterfield, et al. vs. Webb, as Attorney General of California, et al.,"* No. 299, October term, 1922, which is set for argument in this court on November 13, 1922, which appeal involves the question of the constitutionality of an act adopted at the election in November, 1920, known as the California Alien Land Law, which act is in many respects similar to the Washington act involved in the present action, and there is, therefore, involved for determination in the two

cases a number of identical questions.

3. The case is of considerable importance inasmuch as it involves a determination of the question of the power of the legislature of the State of Washington to prohibit the ownership of land and every interest therein, and the right to lease, control, possession and use of lands by persons who are not citizens or who have not declared their intention to become citizens, and affects the property rights of numerous aliens and classes of aliens and citizen land owners in the State of Washington.

4. If the case is submitted to this court upon the same day as is the case of *Porterfield vs. Webb,* before referred to, it will obviate the necessity for an independent consideration at separate times of a number of points of considerable difficulty which are involved in both cases, and will, we believe, for that reason materially lessen the labors of this court in connection therewith.

Appellants therefore respectfully urge that this motion be granted.

JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Appellants.

No. 302.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

PLEASE TAKE NOTICE that on Monday, October 2, 1922, at 12:00 o'clock noon, or as soon thereafter as counsel may be heard, Frank Terrace and Elizabeth Terrace, his wife, and N. Nakatsuka, the appellants in the above entitled cause, will submit to the Supreme Court of the United States a motion, a copy of which is attached hereto, petitioning said Court to advance the above entitled cause for hearing.

Dated September 20, 1922.

JAMES B. HOWE,
E. H. GUIE,
DALLAS V. HALVERSTADT,
Solicitors for Appellants.

To:
Hon. L. L. Thompson,
Attorney General of the State of Washington,
Solicitor for Appellee, Olympia, Washington.

No. 302.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

FRANK TERRACE and ELIZABETH TERRACE, his wife, and N. NAKATSUKA,
Appellants,

vs.

LINDSAY L. THOMPSON, as Attorney General of the State of Washington,
Appellee.

Consent is hereby given to the advancement of this case for hearing so that said case may be heard by this Court upon the same day as is heard the case of *Porterfield, et. al. vs. Webb, Attorney General, et al.,* No. 299, October term, 1922.

Dated September 20, 1922.

L. L. THOMPSON,
Attorney General of the State of Washington,
Solicitor for Appellee.